vious case, is a contract with the individual corporators; and the exemption from taxation of its capital stock must be presumed to have been one of the important if not essential conditions and inducements to the formation of the corporation. The general interest of all the stockholders in the corporate property and business must be regarded as a corporate interest; and the privilege secured to the stockholder to be exempt from taxation on his shares in the capital stock, is also a privilege of the company, inasmuch as it is thus enabled to obtain more readily subscribers to its stock, and thus more certainly to insure the success of the corporation.

The supreme court of Tennessee, in the case of *Wilson* v. *Gaines*, 9 Baxt. 546, have taken a different view from that announced in this opinion, and decided that the word "privilege" would not carry with it such an immunity from taxation; but the grounds of that decision do not seem to be sufficiently strong to outweigh the opposing judgments of the supreme court of the United States, referred to above, and which, in a question of this nature, this court is bound to follow. It results from these views that judgment must be entered for the defendant, dismissing the petition.

Ex parte TWEEDY.

(*District Court, W. D. Tennessee.* November 1, 1884.)

1. NATURALIZATION — REV. ST. § 2165 — PROBATE COURT — COMMON-LAW JURISDICTION—TENNESSEE CODE, § 316*h*.
   The probate court of Shelby county, Tennessee, under the Code, § 316*h*, has no common-law jurisdiction, and is not, therefore, authorized to take a declaration by an alien of intention to become a citizen of the United States under the Revised Statutes, § 2165.
2. SAME SUBJECT—DOWER—BASTARDY—PARTITION.
   Neither its jurisdiction to allot dower, that over bastardy and bastards, nor that of partition of estates, is a "common-law jurisdiction," in the sense of the Revised Statutes of the United States.
3. SAME SUBJECT—COMMON LAW OF TENNESSEE.
   Whatever may be said of any other statutes passed in England before our revolution, the act of 18 Eliz. *c.* 3, concerning bastards, and that of 31 & 32 Henry VIII. *c.* 32, concerning partition, which are the foundation of the legislation on these subjects in Tennessee, were never a part of the common law of North Carolina or Tennessee, and will not, therefore, support any claim for common-law jurisdiction in the probate court of Shelby county.

Application for Naturalization.

A. H. Douglass, for applicant.

HAMMOND, J. The applicant presents a duly-authenticated certificate showing that on May 20, 1881, he declared his intention to become a citizen before the probate court of Shelby county, and the question is whether that is a court "having common-law jurisdic-

tion," as required by section 2165 of the Revised Statutes of the United States. It seems to be settled that it is not necessary that the court should have general common-law jurisdiction; but if *any part* of its jurisdiction answers that designation the requirement of the statute is fulfilled. *U. S.* v. *Power*, 14 Blatchf. 223; *Ex parte Cregg*, 2 Curt. 98; *Ex parte Gladhill*, 8 Metc. 168; *State* v. *Whittemore*, 50 N. H. 245; *Ex parte Conner*, 39 Cal. 98.

In Tennessee, by constitutional and statutory provisions, our courts are divided into courts of law and equity, but by numerous statutes they respectively exercise concurrent jurisdiction in many matters not strictly belonging to them in their congenital capacities. The probate court of Shelby county has its jurisdiction regulated by the act of 1870, c. 86, Tenn. Code (T. & S.) § 316*h*. No trace of any common-law jurisdiction can be found in that statute, unless it may be the concurrent jurisdiction for "the allotment of dower," its "original jurisdiction over bastardy and bastards," or its concurrent jurisdiction "for the partition or sale of estates." Its general jurisdiction is that formerly belonging to the ecclesiastical courts, but the *assignment* of dower is not incident to the administration of estates of deceased persons, nor analogous to any proceeding of a court of ecclesiastical jurisdiction. Smith, Prob. Law, 5, 257. Common-law courts did have inherent jurisdiction of the *assignment* of dower, but it will be found that the common-law right to and the remedies for the recovery of dower have been abrogated and superseded by our Tennessee statutes, so that it is no longer of "common-law jurisdiction" in any of our courts to allot dower, but one of purely statutory jurisdiction, of which the circuit courts of law, the chancery courts of equity, and the county or probate courts, all have concurrent jurisdiction; and, in this matter of the *allotment* of dower, by the act creating its jurisdiction, the probate court of Shelby county "is vested with all the powers of a *chancery* court." The inherent jurisdiction of a chancery court over the subject of dower is of equitable cognizance, as contradistinguished from that common-law jurisdiction which a court of law formerly exercised; and if the probate court jurisdiction should be relegated to either, it is, by the language of the statute above quoted, placed on the basis of that of the equity courts. But this is, I think, quite immaterial, since the result of our statutes and judicial decisions is to establish on this subject of dower an entirely uniform jurisdiction, so far as concerns this case, in all the courts having concurrent power over it, so essentially different, in the right and the remedy known to the common law, that in none of them can this jurisdiction serve as a foundation to support the authority to naturlize aliens under the laws of the United States.

To show this, suppose we consider the provisions of the Code defining the right of dower, and prescribing the peculiar remedy for its enforcement, to have been repealed, but the act establishing the probate court of Shelby county to remain as it now is. What is the re-

sult? Laying aside embarrassment of mere detail not pertinent here, it is clear that, the common-law right and remedy for dower being restored, necessarily, under our judicial system, the circuit courts of law would exercise the common-law jurisdiction, and enforce the common-law remedies, while the chancery courts of equity would retain the equitable jurisdiction and remedies belonging to a court of equity, and the probate court of Shelby county could exercise only the latter by the very language of the statute, and in the very nature of its organization, not being provided with the machinery of a court of law. Smith, Prob. Law, 5, 257; 2 Scrib. Dower, 91, 120, 200; Tenn. Code, (T. & S. Ed.) 316*h*, 2398–2403, 2407–2419; *London* v. *London*, 1 Humph. 1; *Thompson* v. *Stacy*, 10 Yerg. 493; and other cases cited in notes to the Code.

The jurisdiction of the probate court "over bastardy and bastards" comes nearer being a "common-law jurisdiction" than that just considered. Tenn. Code, (T. & S. Ed.) 4208, 5354–5375, and notes. The whole jurisdiction is divided between justices of the peace and the probate court, but will, for the purposes of this case, be considered together. This jurisdiction had no place in the *common law* of England, but is similar in many respects to that given to justices of the peace and the quorum court of general sessions of the peace, by the statute of 18 Eliz. *c.* 3; 2 Bac. Abr. (Bouv. Ed.) tit. "Bastardy," 95.

I would be disposed to hold that, under the rules established for construing this clause of our naturalization laws, by the above-cited cases, this is a matter of "common-law jurisdiction," if the statute of Elizabeth had been common law in this state, but I am of opinion it never was a part of our common law, and that it has always been and remains statutory. It may be a question whether the act of congress should not be construed wholly with reference to the common law of England, and in this respect without regard to that peculiar "common law" which has been established in some of the states as including those English statutes which our forefathers brought with them. But waiving this consideration, which would certainly defeat any power claimed by the probate court of Shelby county to act under the naturalization laws, and the result is the same. It is very difficult to determine with satisfaction whether any given English statute is a part of the common law of Tennessee, or is enforced by virtue of its legislative adoption. Meigs, Dig. (2d Ed.) § 1844; *Glasgow* v. *Smith*, 1 Tenn. 144, and Cooper's note, 168. So far as the question pertains to this case, there should be no difficulty about it, in my judgment. By an act of 1715, *c.* 30, the province of North Carolina enacted that, with certain exceptions, "the common law is and shall be in force in this government till it shall be altered by act of assembly," and "that all statute laws of England" made for certain enumerated purposes, including those "for preventing immorality and fraud," "shall be in force here, although this province, or the plantations in general, are not therein named." This was continued

in force by a subsequent act of 1749, *c.* 1, if this last was not itself abrogated by royal proclamation, leaving the first in force.

In 1741 another act was passed for "the better observance and keeping of the Lord's day, commonly called Sunday, and for the more effectual suppression of vice and immorality," in which there is found a regulation of this jurisdiction "over bastardy and bastards," very similar to the statute of Elizabeth and our present Tennessee Code, both above cited. By a temporary ordinance to the first constitution of North Carolina of 1776 "the statute laws and such parts of the common law and acts of assembly heretofore in use" were continued in force, and, by an act of assembly in 1778, *c.* 5, "all such statutes and such parts of the common law as were heretofore in force and use within this territory, and all acts of the late general assemblies thereof, etc., as are not destructive of, etc., the freedom and independence of this state, etc., are hereby declared to be in full force within this state." By the act of 1789, *c.* 3, ceding the western territory, of which Tennessee is composed, and which was accepted and re-enacted by congress, it was a condition "that the laws in force and use in the state of North Carolina, at the time of passing this act, shall be and continue in full force within the territory hereby ceded until the same shall be repealed or otherwise altered by the legislative authority of said territory." By the Tennessee constitution of 1796, art. 10, § 2, and that of 1834, art. 11, § 1, and that of 1870, art. 11, § 1, "all laws and ordinances now in force and use" in this territory and state, respectively, were continued in force. 1 Mart. Laws N. C. 14, 53, 87, 198, 252, 466, 467; 2 State Chart. & Consts. (U. S.) 1664, 1673, 1687, 1701; Tenn. Code, (T. & S. Ed.) 113; Meigs, Dig. (2d Ed.) § 1844.

I have not examined the title of the statute of Elizabeth conferring this jurisdiction "over bastardy and bastards" upon justices of the peace and the county courts, from which the probate court of Shelby county has derived it by regular succession, but it is plain that whatever may be the rule in other states on this subject, or whatever be the title of that statute, and whatever may be said of any other English statute, this one has never been a part of the common law of North Carolina or Tennessee; because, whatever its title, by the original act of 1715 it must have been thought to be an act "for preventing immorality," since by the act of 1741, "for the more effectual suppression of vice and immorality," it was amended and enlarged to suit our circumstances. It is to be observed how this early legislation carefully distinguished between the "common law," "English statutes," and "acts of assembly," thereby showing that there were mainly three several sources of local law. The act of 1715 did not pretend to enumerate the English statutes by titles, but by the most general description of the subject-matter, and no doubt this act of Elizabeth was by it adopted, not as the common law of North Carolina, for that was provided for by a different section, but as a part of

the *statutory* law of North Carolina, and as such we have inherited it from our mother state. It is, then, with its succeeding alterations, and as we now have it, a part of the statutory and not the common law of Tennessee. This jurisdiction of the probate court, therefore, is not a "common-law jurisdiction" in the sense of our naturalization laws, and will not support any claim of that court to act under them.

The same reasoning precisely applies to the jurisdiction of partition, which is by the statute rather equitable than legal, if there be any distinction in the matter. The act of 31 & 32 Henry VIII. *c.* 32, was adopted by North Carolina as a part of its *statutory* laws, and the right and remedy have been regulated by our Code, so that, like the others above mentioned, they remain purely statutory, and are in no sense "a common-law jurisdiction" in this state, whatever may be said of them in other states. There being no estates in coparcenary in Tennessee, the common-law jurisdiction for their partition cannot aid the jurisdiction of the probate court in this matter. Mart. Laws N. C., *supra; Glasgow* v. *Smith*, and note, *supra; Sawyers* v. *Cator*, 8 Humph. 256; 3 Meigs, Dig. (2d Ed.) § 2062 *et seq.*; 2 Bouv. Dict. tit. "Partition;" Tenn. Code, (T. & S.) 316*h*, 3262–3322; Tenn. Code, (T. & S. Ed.) 2010, 2420; *Strong* v. *Ready*, 9 Humph. 168; 1 Washb. Real Prop. 650. And these views are, in my judgment, fully supported by cases in the supreme court of the United States, describing what is meant in federal jurisprudence by the "common law." *Parsons* v. *Bedford*, 3 Pet. 433; *Irvine* v. *Marshall*, 20 How. 558, 564.

The applicant may now make his first declaration of intention to become a citizen, if he choose, in this court, but he cannot be finally naturalized on this evidence of having heretofore declared it in a court of competent jurisdiction. Application refused.

In re LLOYD, Bankrupt.

(*District Court, W. D. Pennsylvania.* September 3, 1884.)

1. BANKRUPTCY—PARTNERSHIP CREDITORS.
   In bankruptcy, if there is no joint estate, firm creditors have the right to share in the separate estate.
2. SAME—PARTNER ASSUMING FIRM DEBTS.
   Where one of the partners takes the firm assets and agrees to pay the firm debts, the partnership creditors may prove against his estate in bankruptcy, and share *pari passu* with the separate creditors.

In Bankruptcy. *Sur* register's report, etc., upon the proofs of debt by creditors of Lloyd, Hamilton & Co.

Geo. M. Reade, for bankrupt's assignee.

W. G. Chalfant, for creditors of Lloyd, Hamilton & Co.

ACHESON, J. The question here is whether the creditors of Lloyd, Hamilton & Co., a banking firm composed of Wm. M. Lloyd and Charles H. Hamilton, have the right to prove their debts against the estate of Wm. M. Lloyd, the bankrupt. Briefly, the facts are these: The bankrupt carried on the banking business individually at Altoona, Pennsylvania, under the style of Wm. M. Lloyd & Co.; and at Ebensburg, Pennsylvania, under the style of Lloyd & Co.; and at the same time he carried on a distinct and separate banking business at New York city, with Charles H. Hamilton as his copartner, under the firm name of Lloyd, Hamilton & Co.; and he was also a partner in several other banking firms at other places. In October, 1873, he and all his banking firms suspended. His creditors, however, soon granted him an extension, and he resumed business at Altoona and Ebensburg on or about February 2, 1874. To enable him successfully to carry out his extension scheme, on February 27, 1874, by a written instrument of that date, he and Charles H. Hamilton dissolved partnership, Hamilton withdrawing from the concern and transferring all his interest in the firm and assets of Lloyd, Hamilton & Co. to Wm. M. Lloyd, who, in and by the said instrument, covenanted and agreed individually to assume and pay all the debts of the firm of Lloyd, Hamilton & Co., and to release and discharge Hamilton from the payment thereof. Accordingly, all the assets of that firm were delivered to and appropriated by Wm. M. Lloyd. Subsequently, new time notes or extension certificates, in the firm name of Lloyd, Hamilton & Co., were issued by Wm. M. Lloyd to the firm creditors, who agreed to grant him time. He continued business under his extension until about the middle of August, 1875, when he again suspended. Upon the petition of his creditors, filed November 11, 1875, he was individually adjudged a bankrupt in June, 1878. There never was an adjudication in bankruptcy of the firm of Lloyd, Hamilton & Co. Some of the assets, however, formerly belonging to that firm, but which were transferred to Wm. M. Lloyd under the agreement of February 27, 1874, came into the hands of the assignees in bankruptcy of Wm. M. Lloyd. The evidence also shows Charles H. Hamilton's insolvency and that he was in bankruptcy in 1879 without assets.

Upon this state of facts, the register admitted in proof against the estate of Wm. M. Lloyd the claims of creditors of Lloyd, Hamilton & Co.; and in this, I think, he was clearly right, upon both or either of the grounds following: (1) The rule that the joint estate must be applied to pay the joint debts, and the separate estate to pay the separate debts, is only applicable where the joint estate as well as the separate estate is before the court for distribution. *U. S.* v. *Lewis*, 13 N. B. R. 33. And where there is no joint estate, the firm creditors, under such a state of facts as exists here, have a right to share in the separate estate. Blum. Bankr. 268; *In re Pease*, 13 N. B. R. 168. There is no joint estate here; for, by virtue of the agree-

ment of February 27, 1874, the assets of the firm of Lloyd, Hamilton & Co. still remaining *in specie* are the separate estate of Wm. M. Lloyd, the same as if they had always been his individual property. Colly. Partn. § 894, (5th Amer. Ed.;) *Bullitt* v. *M. E. Church*, 26 Pa. St. 108; *Howe* v. *Lawrence*, 9 Cush. 553. And it is quite immaterial that the assignees have kept a separate account of these assets. (2) Where one of the partners takes the firm assets and agrees to pay the joint debts, he becomes individually liable; and the partnership creditors may, at their option, prove against his estate in bankruptcy, and share *pari passu* with the separate creditors. Blum. Bankr. 563; *In re Downing*, 3 N. B. R. 181, 183; *In re Long*, 9 N. B. R. 227; *In re Rice*, Id. 373; *In re Collier*, 12 N. B. R. 266.

At the hearing it was alleged that the proofs of the creditors of Lloyd, Hamilton & Co. were informal. How this is I do not decide, as the matter is not properly before me. If the proofs are objectionable for informality, leave will be granted to amend them. The exception numbered 5, before the register, touching the claims of Lloyd, Huff & Watt and others was not discussed before me, and whether or not those claims, or any of them, come within the ruling I have just made in the matter of the proof tendered by Jesse Chambers, assignee of Lloyd, Huff & Watt, I am now unable to determine from the papers before me. Upon the precise point raised by this exception I now decide nothing. The ruling at present made simply determines that proof against the estate of this bankrupt by creditors of Lloyd, Hamilton & Co. is allowable.

And now, September 3, 1884, the exceptions to the register's report, admitting to proof claims of creditors of Lloyd, Hamilton & Co., are overruled, and such proofs are sustained.

In re LLOYD, Bankrupt.

(*District Court, W. D. Pennsylvania.* September 3, 1884.)

BANKRUPTCY—PARTNERSHIP—INDIVIDUAL CREDITORS.

The general rule everywhere now is that when all the partners are in bankruptcy, the separate estate of one partner shall not claim against the joint estate of the partnership in competition with the joint creditors, nor the joint estate against the separate estate in competition with the separate creditors.

In Bankruptcy. *Sur* proof by Lloyd, Huff & Watt against the estate of Wm. M. Lloyd.

Geo. M. Reade, for bankrupt's assignee, excepting.

W. H. Klingensmith, for assignee of Lloyd, Huff & Watt, creditors.

ACHESON, J. Lloyd, Huff & Watt, by their assignee in bankruptcy, Jesse Chambers, tender proof of debt against the separate estate in

bankruptcy of Wm. M. Lloyd, one of the members of said firm. His assignee in bankruptcy, J. W. Curry, and his separate creditors, resist the proof. Wm. M. Lloyd was adjudged a bankrupt upon the petition of his creditors, and the firm of Lloyd, Huff & Watt upon the petition of W. H. Watt, one of its members. The said firm, composed of Wm. M. Lloyd, George J. Huff, and W. H. Watt, did a general banking business at Latrobe, Pennsylvania. Wm. M. Lloyd did a separate and distinct banking business at Altoona, Pennsylvania, under the style of Wm. M. Lloyd & Co., and at Ebensburg, Pennsylvania, under the style of Lloyd & Co., but he had no partner at either of these places. There were business dealings and accounts between Wm. M. Lloyd, as a banker at Altoona, and the said firm of Lloyd, Huff & Watt. The proof of debt in question consists of three items thereof only. No settlement has been had between the members of said firm, nor any general settlement between the firm and Wm. M. Lloyd. The separate estate of Wm. M. Lloyd is altogether insufficient to pay his separate debts proved in bankruptcy, and the evidence indicates that his individual creditors will receive a much smaller per centage than the firm creditors will out of the partnership assets.

The question involved here is not new, nor, under the authorities, doubtful. The general rule everywhere now is that, when all the partners are in bankruptcy, the separate estate of one partner shall not claim against the joint estate of the partnership in competition with the joint creditors, nor the joint estate against the separate estate in competition with the separate creditors. Coll. Partn. § 990, (5th Amer. Ed.;) Blum. Bankr. 268; *In re Lane*, 10 N. B. R. 135. The English doctrine is this: that proof cannot be made by the joint estate against the separate estate except in case of a fraudulent abstraction from the joint funds by one of the partners; and not then, if there has been any waiver of the tortious act by the other partner so as to reduce it to a matter of contract. *Ex parte Turner*, 4 Dea. & Ch. 169; *Ex parte Harris*, 2 Ves. & B. 210. This is the prevailing rule in the United States, and, under the bankrupt law of 1867, it has been repeatedly adjudged that where the debt by one partner to a bankrupt firm has been incurred by the consent or privity of the other partner, proof of the joint creditors against the separate estate, in competition with the separate creditors, will not be admitted in a court of bankruptcy. *In re McEwen*, 12 N. B. R. 11; *In re McLean*, 15 N. B. R. 333; *In re May*, 19 N. B. R. 101.

Now it is not pretended that the present case is one of fraudulent abstraction within the above-stated exception, and nothing appears to take the case out of the general rule. In admitting the proof of Lloyd, Huff & Watt, the register acted upon a mistaken view of section 5074 of the Revised Statutes. That section does not relate at all to the claims of partners *inter se*, but altogether to proof, where the bankrupt is liable to a third person upon distinct contracts as a

member of two or more distinct firms, or as a sole trader, and also as a member of a firm.

And now, September 3, 1884, the exceptions to the register's report upon the proof of Lloyd, Huff & Watt are sustained; and it is ordered, adjudged, and decreed that said proof be disallowed and expunged.

FISCHER *v.* HAYES.

(Circuit Court, S. D. New York. November 1, 1884.)

PATENTS FOR INVENTIONS—REFERENCE TO DEPUTY CLERK OF COURT AS MASTER—ACT OF MARCH 3, 1879—AMENDMENT.

Where the court makes an interlocutory decree in a suit for infringement of a patent, awarding a recovery of profits and damages, and directing a reference to a party "as master *pro hac vice*," to take and report an account of profits, and to assess the damages, and such party is at the time a deputy clerk of the court, and no "special reason" for his appointment is assigned, as required by the act of March 3, 1879, (20 St. at Large, 415,) after his report has been made it will not be set aside, on motion of defendant, on the ground that no "special reason" for the appointment was assigned when it was made with the assent in open court of the solicitors of both parties, and they carried on the proceedings before the master for several months after the discovery that he was a deputy clerk, but the decree may be amended *nunc pro tunc*, by inserting the words, "the solicitors for the respective parties having in open court consented to the appointment of said master, although he is the deputy clerk of court, and the court now determining that such consent is a sufficient special reason for such appointment."

In Equity.

Wetmore & Jenner, for Fischer.

Lawrence & Waehner, for Hayes.

BLATCHFORD, Justice. The deficiency appropriation act of March 3, 1879, (20 St. at Large, 415,) contained this provision: "No clerk of the district or circuit courts of the United States, or their deputies, shall be appointed a receiver or a master in any case, except where the judge of said court shall determine that special reasons exist therefor, to be assigned in the order of appointment." While this statute was in force, and on the first of February, 1881, the court made and entered an interlocutory decree in this case, which is a suit in equity for the infringement of letters patent, awarding to the plaintiff a recovery of profits and damages, and directing a reference to John A. Shields, "as master *pro hac vice*," to take and report an account of profits and to assess the damages. Mr. Shields was at the time chief deputy clerk of the court, duly appointed under section 624 of the Revised Statutes. The decree did not assign any special reasons for the appointment of Mr. Shields. The master proceeded with the accounting down to January 10, 1884, when he filed his report in favor of the plaintiff. Exceptions were filed to it, which were heard by the court and overruled, and the report was confirmed.